



State of Utah

**Department of
Natural Resources**

MICHAEL R. STYLER
Executive Director

**Division of
Oil, Gas & Mining**

JOHN R. BAZA
Division Director

JON M. HUNTSMAN, JR.
Governor

GARY R. HERBERT
Lieutenant Governor

November 6, 2006

CERTIFIED RETURN RECEIPT
7004 2510 0004 1824 8064

Shawn Nay
DJN Rockwalls
6078 West 13360 South
Herriman, Utah 84065

Subject: Reassessment for Cessation Order MC-06-01-05, DJN Rockwalls,
Unpermitted Operations in Utah County, Utah

Dear Mr. Nay;

The proposed civil penalty assessment for the above referenced cessation order was sent to you on August 1, 2006. At that time the abatement had not been completed and some of the facts surrounding the violation were not available. In accordance with rule R647-7-105, the penalty is to be reassessed when it is necessary to consider facts, which were not reasonably available on the date of the issuance of the proposed assessment. Now that the Cessation Order has been terminated (termination notice enclosed) the assessment can be completed. Following is the reassessment of the penalty for the cessation order:

- MC-06-01-05 Violation 1 of 1 \$770 _____

The enclosed worksheet specifically outlines how the violation was assessed. You should note that good faith points have now been awarded.

Under R647-7-106, there are two informal appeal options available to you:

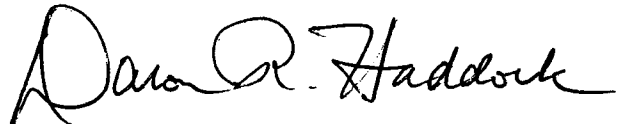
1. If you wish to informally appeal the fact of the Cessation Order, you should file a written request for an Informal Conference within thirty (30) days of receipt of this letter. This conference will be conducted by the Division Director, Associate Director or assigned conference officer. This Informal Conference is distinct from the Assessment Conference regarding the proposed penalty.

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Shawn Nay
Unpermitted site
November 6, 2006

2. If you wish to review the proposed penalty assessment, you should file a written request for an Assessment Conference within thirty (30) days of receipt of this letter. If you are also requesting a review of the fact of violation, as noted in paragraph one, the assessment conference will be scheduled immediately following that review.

If a timely request for review is not made, the fact of the cessation order will stand, the proposed penalty(ies) will become final, and the penalty(ies) will be due and payable within thirty (30) days of the reassessment. Please remit payment to the Division, mail c/o Vickie Southwick.

Sincerely,



Daron R. Haddock
Assessment Officer

Enclosures: Worksheets & Termination notice
cc: Vickie Southwick, Exec. Sec.
Vicki Bailey, Accounting

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WORKSHEET FOR ASSESSMENT OF PENALTIES
DIVISION OF OIL, GAS & MINING
Minerals Regulatory Program

COMPANY / MINE DJN Rockwalls/Utah County site PERMIT Unpermitted
NOV / CO # MC-06-01-05 VIOLATION 1 of 1

REASSESSMENT DATE November 6, 2006

ASSESSMENT OFFICER Daron R. Haddock

I. HISTORY (Max. 25 pts.) (R647-7-103.2.11)

- A. Are there previous violations, which are not pending or vacated, which fall within three (3) years of today's date?

| PREVIOUS VIOLATIONS | EFFECTIVE DATE | POINTS (1pt for NOV 5pts for CO) |
|---------------------|----------------|-------------------------------------|
| <u>none</u> | <u></u> | <u></u> |
| <u></u> | <u></u> | <u></u> |

TOTAL HISTORY POINTS 0

II. SERIOUSNESS (Max 45pts) (R647-7-103.2.12)

NOTE: For assignment of points in Parts II and III, the following apply:

1. Based on facts supplied by the inspector, the Assessment Officer will determine within each category where the violation falls.
2. Beginning at the mid-point of the category, the Assessment Officer will adjust the points up or down, utilizing the inspector's and operator's statements as guiding documents.

Is this an EVENT (A) or Administrative (B) violation? Event
(assign points according to A or B)

A. EVENT VIOLATION (Max 45 pts.)

1. What is the event which the violated standard was designed to prevent?

*Mining without appropriate approvals/ Environmental Harm/ Damage
to Property*

2. What is the probability of the occurrence of the event which a violated standard was designed to prevent?

| <u>PROBABILITY</u> | <u>RANGE</u> |
|--------------------|--------------|
| None | 0 |
| Unlikely | 1-9 |
| Likely | 10-19 |
| Occurred | 20 |

ASSIGN PROBABILITY OF OCCURRENCE POINTS 20

PROVIDE AN EXPLANATION OF POINTS:

*** *An Operator is required to file a notice of intention to commence mining operations with the Division of Oil Gas and Mining prior to conducting mining operations. Several small areas have been disturbed at this location without the operator having obtained approval to do so or without posting a bond. Rock and mineral material has been excavated from the site using mechanized equipment and some rock has been hauled from the site. Disturbance has actually occurred.*

3. What is the extent of actual or potential damage? RANGE 0-25

In assigning points, consider the duration and extent of said damage or impact, in terms of area and impact on the public or environment.

ASSIGN DAMAGE POINTS 5

PROVIDE AN EXPLANATION OF POINTS:

*** *The inspector stated that the Operator was removing rock from several small areas. Each individual disturbance is fairly small, but combined, they may be greater than five acres. Damage would be the loss of resources such as permanent vegetation and soil from the area disturbed. No soil had been salvaged during the mining operation. There is potential for sediment to leave the site, but no evidence of impacts off the site was directly observed. The disturbed areas are relatively small and the potential for damage is considered minor because the excavations are relatively shallow and should be readily reclaimable. Points are assigned in the lower part of the range.*

B. ADMINISTRATIVE VIOLATIONS (Max 25pts)

1. Is this a POTENTIAL or ACTUAL hindrance to enforcement? NA
RANGE 0-25

Assign points based on the extent to which enforcement is actually or potentially hindered by the violation.

ASSIGN HINDRANCE POINTS N/A

PROVIDE AN EXPLANATION OF POINTS:

TOTAL SERIOUSNESS POINTS (A or B) 25

III. DEGREE OF FAULT (Max 30 pts.) (R647-7-103.2.13)

- A. Was this an inadvertent violation which was unavoidable by the exercise of reasonable care? IF SO--NO NEGLIGENCE; or, was this a failure of a permittee to prevent the occurrence of a violation due to indifference lack of diligence, or lack of reasonable care, the failure to abate any violation due to the same or was economic gain realized by the permittee? IF SO--GREATER DEGREE OF FAULT THAN NEGLIGENCE.

| | |
|-------------------------|-------|
| No Negligence | 0 |
| Negligence | 1-15 |
| Greater Degree of Fault | 16-30 |

STATE DEGREE OF NEGLIGENCE Negligence

ASSIGN NEGLIGENCE POINTS 12

PROVIDE AN EXPLANATION OF POINTS:

*** *The inspector indicated that the operator had been party to violations issued to Timberline Rock on November 21, 2005 and May 17, 2006, which involved mining outside of permitted areas. In both cases DJN was the party conducting the mining for the permittee. After being notified in the past of the importance of staying within the permitted area, this Operator was showing disregard for the rules. This indicates indifference to the rules or lack of reasonable care. A prudent operator would understand the need to stay within the boundary of a permit. Because of the prior history at this site, the Operator has manifested a higher amount of negligence and points are assigned at the higher end of the negligence scale.*

IV. GOOD FAITH (Max 20 pts.) (R467-7-103.2.14)

(Either A or B) (Does not apply to violations requiring no abatement measures)

- A. Did the operator have onsite, the resources necessary to achieve compliance of the violated standard within the permit area?

IF SO--EASY ABATEMENT

Easy Abatement Situation

| | | |
|---|--|-------------|
| X | Immediate Compliance | -11 to -20* |
| | (Immediately following the issuance of the NOV) | |
| X | Rapid Compliance | -1 to -10 |
| | (Permittee used diligence to abate the violation) | |
| X | Normal Compliance | 0 |
| | (Operator complied within the abatement period required) | |

(Operator complied with condition and/or terms of approved Mining and Reclamation Plan)

*Assign in upper or lower half of range depending on abatement occurring the 1st or 2nd half of abatement period.

- B. Did the permittee not have the resources at hand to achieve compliance, or does the situation require the submission of plans prior to physical activity to achieve compliance?

IF SO--DIFFICULT ABATEMENT

Difficult Abatement Situation

| | | |
|---|---|-------------|
| X | Rapid Compliance | -11 to -20* |
| | (Permittee used diligence to abate the violation) | |
| X | Normal Compliance | -1 to -10* |
| | (Operator complied within the abatement period required) | |
| X | Extended Compliance | 0 |
| | (Permittee took minimal actions for abatement to stay within the limits of the NOV or the violated standard of the plan submitted for abatement was incomplete) | |
| | (Permittee complied with conditions and/or terms of approved Mining and Reclamation Plan) | |

EASY OR DIFFICULT ABATEMENT? difficult

ASSIGN GOOD FAITH POINTS -10

PROVIDE AN EXPLANATION OF POINTS:

*** *The abatement required submission of maps and a bond, so this is considered to be a difficult abatement. The Cessation Order was issued on June 22, 2006. The abatement required plans to be submitted or the site to be reclaimed by October 31, 2006. The Operator chose to reclaim the site rather than permit it as a large mine. A bond was posted in the amount of \$1000 on October 17, 2006 to cover the cost of revegetation. The reclamation of the site was completed on October 28, 2006, which was before the abatement deadline. . Because compliance was achieved within the required abatement period (although somewhat extended for getting the bond), good faith points are awarded in the normal compliance of a difficult abatement category.*

V. ASSESSMENT SUMMARY (R647-7-103.3)

| | |
|------------------------------|-----------------------|
| NOTICE OF VIOLATION # | <u>MC-06-01-05-01</u> |
| I. TOTAL HISTORY POINTS | <u>0</u> |
| II. TOTAL SERIOUSNESS POINTS | <u>25</u> |
| III. TOTAL NEGLIGENCE POINTS | <u>12</u> |
| IV. TOTAL GOOD FAITH POINTS | <u>-10</u> |
| TOTAL ASSESSED POINTS | <u>27</u> |
| TOTAL ASSESSED FINE | <u>\$ 770</u> |



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DEPARTMENT OF NATURAL RESOURCES
Division of Oil, Gas & Mining

MICHAEL R. STYLER
Executive Director

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**TERMINATION of
CESSATION ORDER**

To the following Permittee or Operator:

Name: DJN Rockwalls

Mailing Address: 6078 West 13360 South, Herriman, UT 84065

Mine Name: Unpermitted Permit Number: M/049/056

Utah Mined Land Reclamation Act, Section 40-8-1 et. seq., *Utah Code Annotated (1953)*:

Notice of Violation No.: MC-06-01-05 Dated June 23, 2006

Part 1 of 1 is ☐ vacated ☒ terminated

Reason: Operator has completed the abatement work by reclaiming the area and providing
a reclamation surety to cover revegetation costs.

Date of service/ mailing: November 6, 2006

Shawn Nay
Permittee or Operator Representative

Lynn Kunzler
Division of Oil, Gas & Mining Representative

Environmental Scientist/Rec. Biologist
Title

[Signature]
Signature